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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/560,447	04/28/2000	Steve A. DeLuca	MFCP.70155	3196

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EXAMINER

WINTERS, MAREISHA N

ART UNIT	PAPER NUMBER
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2153

DATE MAILED: 11/05/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/560,447

Applicant(s)

DELUCA, STEVE A.

Examiner

Mareisha N. Winters

Art Unit

2153

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-8,10,12,13,15 and 17-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-8,10,12,13,15 and 17-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This Office Action is in response to the communication filed on August 18, 2003.
Claims 1, 8, 10, 12 and 17 have been amended. Claims 2 and 9 have been canceled. Claims 20-24 have been newly added.
2. Claims 1, 3-8, 10, 12, 13, 15 and 17-24 are pending in the application.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claims 1, 8 and 10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1, 8, and 10 recite the limitation "*wherein the client management data collected at each of the two or more client machines is also stored and averaged at that client machine,*" this limitation is unclear. It is unclear as to whether or not the data is averaged and stored at each machine separately, or the data is averaged for two or more machines and stored at a particular machine. For examination purposes, claims 1, 8 and 10 will be understood as the data is averaged and stored at each individual machine.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 2153

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 1, 3, 4, 6, 7, 8, 10, 12, 13, 20, 21, 23 and 24, as understood, are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent 6,269,401 to Fletcher et al. (hereinafter "Fletcher").

In considering claim 1, Fletcher discloses a method of collecting capacity planning data for a plurality of client machines at a central collection location (column 3, lines 39-47; Note in Fig. 4 the "performance statistics" that are collected are demonstrated.), said method comprising:

collecting client management data at two or more of the plurality of client machines (column 6, lines 26-28 and lines 38-40);

storing the client management data in a cache at each of the two or more client machines for a selected time interval (column 6, lines 38-40 and column 8, lines 7-17);

averaging the cached client management data at each of the two or more client machines over the selected time interval, wherein the client management data collected at each of the two or more client machines is also stored and averaged at that client machine (column 8, lines 20-22); and

transmitting the averaged client management data to the central collection location (column 8, lines 32-35).

In considering claim 3, Fletcher discloses wherein said collecting step includes collecting management data for a plurality of clients (Fig. 3, "110", "110a", and "110b").

In considering claim 4, Fletcher discloses wherein the client management data is collected at a first time interval (Fig. 7, "701").

In considering claim 6, Fletcher discloses wherein the client management data is stored in one or more tables in the cache (Fig. 5).

In considering claim 7, Fletcher discloses wherein the client management data is stored in one or more allocated portions of memory (Fig. 5).

In considering claim 8, Fletcher discloses one or more computer-readable media having computer-executable instructions for performing a method comprising:

collecting client management data at two or more of the plurality of client machines (column 6, lines 26-28 and lines 38-40);

storing the client management data in a cache at each of the two or more client machines for a selected time interval (column 6, lines 38-40 and column 8, lines 7-17);

averaging the cached client management data at each of the two or more client machines over the selected time interval, wherein the client management data collected at each of the two or more client machines is also stored and averaged at that client machine (column 8, lines 20-22); and

transmitting the averaged client management data to the central collection location (column 8, lines 32-35).

In considering claim 10, Fletcher discloses one or more computer-readable media having computer-executable components comprising:

a plurality of client collection components for collecting client management data at two or more of a plurality of client machines (column 6, lines 26-28 and lines 38-40; Note it is inherent that each of the client machines have separate collection components, therefore there is a plurality of client collection components.);

a plurality of client caching components for storing the client management data at each of the two or more client machines for a selected time interval (column 6, lines 38-40 and column 8, lines 7-17; Note it is inherent that each of the client machines has a separate caching component, therefore there is a plurality of client caching components.);

a plurality of averaging components for averaging the cached client management data over the selected time interval at each of the two or more client machines wherein the client management data collected at each of the two or more client machines is also stored and averaged at that client machine (column 8, lines 20-22; Note it is inherent that each of the client machines has a separate averaging component, therefore there is a plurality of averaging components.); and

a plurality of transmission components for transmitting the averaged client management data to a central collection location (column 8, lines 32-35; Note it is inherent that each of the client machines has a separate transmission component, therefore there is a plurality of transmission components.).

In considering claim 12, Fletcher discloses wherein the transmission components transmit raw client management data upon occurrence of an event (column 8, lines 37-41).

In considering claim 13, Fletcher discloses wherein the event is exceeding of one or more performance thresholds (column 9, lines 5-8).

In considering claim 20, Fletcher discloses wherein the media is coupled with a computer system having a processor, a memory and an operating environment (Fig. 1).

In considering claim 21, Fletcher discloses wherein the client management data is collected at a first time interval (Fig. 7, "701").

In considering claim 23, Fletcher discloses wherein the client management data is stored in one or more tables in the cache (Fig. 5).

In considering claim 24, Fletcher discloses wherein the client management data is stored in one or more allocated portions of memory (Fig. 5).

7. Claims 15 and 17-19 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,453,346 to Garg et al. (hereinafter "Garg").

In considering claim 15, Garg discloses one or more computer-readable media having computer-executable modules comprising:

means for collecting client management data (column 4, lines 22-31);

means for storing the client management data for a selected time interval (column 3, lines 14-18);

means for averaging the stored client management data over the selected time interval (column 3, lines 18-21 and column 5, lines 5-6); and

means for transmitting the averaged client management data to a central location (column 5, lines 14-15).

In considering claim 17, Garg discloses wherein the transmission means transmits raw client management data upon occurrence of an event (column 6, lines 38-41).

In considering claim 18, Garg discloses wherein the event is exceeding of one or more performance thresholds (column 6, lines 38-41).

In considering claim 19, Garg discloses one or more computer-readable media having stored thereon a data structure (column 12, lines 60-64) comprising a data field containing capacity planning data which represents averaged performance monitoring data collected over a

Art Unit: 2153

period of time (column 3, lines 18-21 and column 5, lines 5-6), wherein the performance monitoring data is converted into capacity planning data before the data structure is transmitted to a central collection location for capacity planning purposes (column 5, lines 14-15).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 5 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fletcher.

In considering claims 5 and 22, Fletcher fails to disclose that the selected time interval is at least twice as long as the first time interval. Nonetheless, this feature is well known in the art and would have been an obvious modification of the system disclosed by Fletcher. A person having ordinary skill in the art would have readily recognized the desirability and advantages of modifying Fletcher by employing the conventional feature of making the selected time interval twice as long as the first time interval in order to obtain a larger sampling of data in order to compute more accurate statistical results.

Response to Arguments

10. Applicant's arguments with respect to claims 1, 3-8, 10, 12 and 13 have been considered but are moot in view of the new ground(s) of rejection.

11. Applicant's arguments with respect to claims 15 and 17-19 have been fully considered but they are not persuasive. Regarding claim 15, Applicant's argue that the *specification* discloses

Art Unit: 2153

collecting, storing and averaging the client management data locally, and that Garg does not teach this limitation. However, this limitation is not in the claim language. Therefore, it is irrelevant whether the reference includes those features or not. The specification is not the measure of invention. Therefore, limitations contained therein cannot be read into the claims for the purpose of avoiding the prior art. In re Sporck, 55 CCPA 743, 386 F.2d 924, 155 USPQ 687 (1968). "It is now beyond debate that limitations from the specification will not, during examination before the PTO, be imputed to the claims in order to avoid prior art; such limitations must be specifically stated in the claims." See In re Lundberg, 244 F.2d 543, 548, 113 USPQ 530, 534 (CCPA 1957).

Regarding claim 19, Applicant's argue that Garg neither teaches nor suggests the data structure of the claim. The Office respectfully disagrees. In claim 19, the Applicant defines capacity planning data as data that *represents averaged performance monitoring data collected over a period of time*. Garg discloses collecting performance monitoring data (column 4, lines 22-26), and averaging the data that has been collected over a period of time (column 4, lines 31-35; Note that Garg's 'statistical reduction' includes averaging the data.). Therefore, Garg does disclose converting performance monitoring data into capacity planning data before the data is transmitted to a central location. Hence, Garg does teach the limitations as claimed in claim 19.

Conclusion

12. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 2153

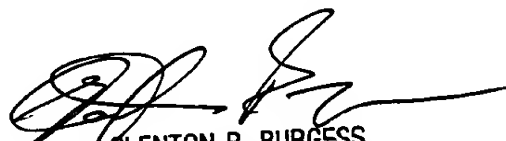
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mareisha N. Winters whose telephone number is (703) 305-7838. The examiner can normally be reached on Monday-Friday, 8:00am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenton B. Burgess can be reached on (703) 305-4792. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

Mareisha N. Winters *mw*
Patent Examiner
Art Unit 2153
October 28, 2003


GLENTON B. BURGESS
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